

PT 95-37
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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ILLINOIS DISTRICT COUNCIL OF      )   Docket No.(s)  93-16-712  
THE ASSEMBLIES OF GOD             )  
                                   )   PI No.      20-22-108-040-0000  
                                   )   (Cook County)  
                                   )  
Applicant                         )  
                                   )  
v.                                )  
                                   )  
THE DEPARTMENT OF REVENUE         )   George H. Nafziger  
OF THE STATE OF ILLINOIS         )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney Barry C. Kessler appeared on behalf of the Illinois District Council of the Assemblies of God (hereinafter referred to as the "Applicant").

SYNOPSIS: The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on March 14, 1995, to determine whether or not Cook County parcel No. 20-22-108-040-0000 and the building and parking lot thereon, should be exempt from real estate tax for the 1993 assessment year. Is the Applicant a religious organization? Did the Applicant own the parcel here in issue and the building and parking lot thereon, during part, or all of, the 1993 assessment year? Was the parcel here in issue and the building and parking lot thereon, used primarily for religious purposes during part, or all of, the 1993 assessment year? Following the submission of all of the evidence and a review of the record, it is determined that the Applicant is a religious organization. It is also determined that the Applicant owned this parcel during the period January 1, 1993, through June 30, 1993. Finally, it is determined that the Applicant failed to establish that the parcel here in issue and the 34,618

square foot building and parking lot located thereon, were primarily used for religious purposes during the period January 1, 1993, through June 30, 1993.

FINDINGS OF FACT: The position of the Illinois Department of Revenue (hereinafter referred to as the "Department"), in this matter, namely that the parcel here in issue and the building thereon, did not qualify for exemption during the 1993 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 6C.

Mr. John T. Powen was present, and testified on behalf of the Applicant.

On January 26, 1994, the Cook County Board of Appeals forwarded an Application for Property Tax Exemption To Board of Appeals to the Department (Dept. Ex. No. 2). On October 20, 1994, the Department notified the Applicant that it was denying the exemption of the parcel here in issue for the 1993 assessment year (Dept. Ex. No. 3). On November 8, 1994, one of the attorneys for the Applicant requested a formal hearing in this matter (Dept. Ex. No. 4). The hearing held in this matter on March 14, 1995, was held pursuant to that request.

I take Administrative Notice of the fact that the Applicant has been determined by the Department to be a religious organization in Department Docket Nos. 88-60-114, 89-59-80, 89-59-84, 89-59-85, and 91-16-672, among others.

The Applicant acquired this parcel by a trustee's deed on July 3, 1990. During the period July 3, 1990, through December 31, 1992, this parcel and the building thereon, were occupied by the Hope Tabernacle Assembly of God Church (hereinafter referred to as "Hope Tabernacle"), which used said parcel and the 34,618 square foot one-story building located thereon, for religious purposes. At the end of 1992, Hope Tabernacle, which only had 75 members, found itself unable to meet the

mortgage payments on this parcel, ceased operations, abandoned this parcel, and then disbanded. The Applicant then proceeded to offer this parcel and the 34,618 square foot building and parking lot located thereon, for sale. On June 30, 1993, the Walgreen Company purchased this property, and has proceeded to remodel it to be used as a Walgreen's Drug Store.

During the period January 1, 1993, through June 30, 1993, the only times this parcel was used for any purpose, was on March 4, 1993, and June 25, 1993, when the Royal Rangers, a scouting-type organization sponsored by the New Heritage Christian Center of the Assemblies of God (hereinafter referred to as "New Heritage") used the parking lot, the hallway from the parking lot entrance to the vestibule of the building, and said vestibule for its activities. On each of those two occasions, the Royal Rangers, which consisted of approximately 20 boys and two or three leaders, met for one to one and one-half hours. Otherwise, this parcel and the 34,618 square foot one-story building and parking lot located thereon, were not used for any purpose during the period January 1, 1993, through June 30, 1993. New Heritage, during 1993, regularly conducted its worship services at its church facilities located at 2705 East 83rd Street, in Chicago.

1. Based on the foregoing, I find that the Applicant is a religious organization.

2. I also find that the Applicant owned this parcel and the building and parking lot thereon, during the period January 1, 1993, through June 30, 1993.

3. Hope Tabernacle, which had previously used this parcel, I find, ceased using this parcel and the building thereon, before January 1, 1993.

4. On June 30, 1993, this parcel, I find, was sold to the Walgreen Company, which used it for commercial purposes.

5. During the period January 1, 1993, through June 30, 1993, I find that the parcel here in issue and the 34,618 square foot building and

parking lot located thereon, were primarily vacant and unused, except for two, one to one and one-half hour incidental uses by about 20 Royal Rangers and their leaders, of a very small area of the building and the parking lot.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.2 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property used exclusively for religious purposes, or used exclusively for school and religious purposes,...and not leased or otherwise used with a view to profit...."

35 ILCS 205/19.16 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided hereinbefore...and owned by any...religious...institution which meets the qualifi-cations for exemption." (Emphasis supplied)

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956); *Milward v. Paschen*, 16 Ill.2d 302 (1959); and *Cook County Collector v. National College of Education*, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944) and *People ex rel. Lloyd v. University of Illinois*, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of

establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department, 189 Ill.App.3d 858 (2nd Dist. 1989); Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

In the case of Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983), the Court held that property which was vacant and not used, did not qualify for the statutory exemption as property used exclusively for religious purposes, regardless of the owner's intent.

I conclude that during the period January 1, 1993, through June 30, 1993, the Applicant has failed to establish that this parcel and the 34,618 square foot building and parking lot located thereon, were primarily used for religious purposes, since the property stood vacant during that period, except for two de minimis uses of one to one and one-half hours of a small area of the building, and the parking lot. It should also be pointed out that prior to the beginning of this period Hope Tabernacle, which had previously occupied this parcel, had abandoned it and disbanded. Also, at the end of this period, the Applicant sold this parcel to the Walgreen Company, which remodeled the property, so that it could be used as a drug store. During the period January 1, 1993, through June 30, 1993, I conclude that the use of this parcel for religious purposes had ceased, except for the two de minimis uses, and at the end of the period said parcel was sold, and not returned to religious use, but used for commercial purposes.

I therefore recommend that Cook County parcel No. 20-22-108-040-0000 be placed back on the tax rolls for the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger

Administrative Law Judge